

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 11/15/16

CLARENDON COUNTY ORDINANCE NO. 2016-08

Beulah H. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

AN ORDINANCE AUTHORIZING THE COUNTY TO FINANCE AND ACQUIRE PUBLIC SAFETY VEHICLES AND RELATED EQUIPMENT IN AN AMOUNT NOT EXCEEDING \$250,000; TO EXECUTE AND DELIVER ALL DOCUMENTS NECESSARY TO CARRY OUT THE FINANCING AND ACQUISITION; AND OTHER RELATED MATTERS.

2016 NOV 15 AM 10:17
CLARENDON COUNTY, SC
DEULAH H. ROBERTS
CLERK OF COURT

Pursuant to the authority by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, **BE IT ENACTED BY CLARENDON COUNTY COUNCIL:**

Section 1. Findings and Determinations.

- (a) The County is a body corporate and politic and political subdivision of the State of South Carolina and has the power to enter into agreements to finance and acquire equipment.
- (b) The County desires to acquire and finance public safety vehicles and related equipment, some of which is listed on Schedule I, in an amount not exceeding \$250,000 ("Equipment"), through means of borrowing money from a bank or other financial institution selected by the County Administrator ("Financing").
- (c) It is in the best interest of the County to acquire the Equipment by entering into the Financing. The Financing will enable the County to acquire the Equipment, which is necessary for the County's proper functioning.

Section 2. Approval of Acquisition and Financing; Delegation of Authority. The County shall acquire and finance the Equipment in accordance with a lease purchase financing, or other means of financing, which are repayable by annual appropriations from operational millage, or other sources, or from general obligation indebtedness.

If the Financing is accomplished through a traditional lease-purchase arrangement, the Financing will not constitute a "financing agreement" and the Equipment will not constitute an "asset" as these terms are defined in Section 11-27-110 of the SC Code. Thus, the amount of the Financing will not be includable when calculating the County's constitutional debt limit, and the Financing will be subject to annual appropriation by the County. Should the Financing be accomplished through any alternative means, the County Administrator, with advice from the County Treasurer and the County's Bond Counsel, shall likewise endeavor to ensure the Financing does not count against the County's constitutional debt limit.

The County shall distribute a Request for Offers in substantially the form set forth as *Exhibit A* to various banks and other financial institutions in Clarendon County and other areas as the County Administrator determines. Without further authorization, the County Council delegates to the County Administrator, with advice from the County Treasurer and the County's Bond Counsel, to the extent necessary, the authority to (a) determine the payment schedule under the Financing; (b) determine the date and time for receipt of bids under the Request for Offers; (c) award the sale of the Financing to the lowest responsible bidder ("Bidder"), in accordance with the terms of the Request for Offers, provided the net interest cost does not exceed 7.5% per annum; and (d) make changes to the quantity, cost or description of the Equipment.

Section 3. Approval of Agreements. Without further authorization, the County Administrator, with advice from the County Treasurer and the County's Bond Counsel, to the extent necessary, is authorized to approve the form, terms and provisions of the Financing. The County Administrator, with advice from the County Treasurer and the County's Bond Counsel, to the extent necessary, is authorized, empowered and directed to execute, acknowledge and deliver the various documents to carry out the Acquisition and Financing ("Transaction Documents") in the name and on behalf of the County. The Transaction Documents are to be in the form as shall be approved by the County Administrator, with advice from the County Treasurer and the County's Bond Counsel, to the extent necessary, the execution thereof to constitute conclusive evidence of that approval.

Section 4. Execution of Documents. The County Council Chairman, the County Administrator and the Clerk to County Council are fully empowered and authorized to take further action and to execute and deliver all documents as may be reasonably necessary to effect the Financing and the delivery of the Transaction Documents and any related documents in accordance with their terms and conditions, and the contemplated transactions, and the action of these officers in executing and delivering any of these documents, in the form as the County Council Chairman or the County Administrator shall approve, is fully authorized.

Section 5. Federal Tax Covenant. The County covenants that it will not take any action which will, or fail to take any action which failure will, cause interest components of the payments to be made under the Transaction Documents to become includable in the gross income of the successful Bidder or its successors or assignees for federal income tax purposes pursuant to the provisions of the Internal Revenue Code of 1986, as amended ("IRC"), and regulations promulgated thereunder in effect on the date of original issuance of the Transaction Documents, and that the County will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the IRC, and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the payments to be made under the Transaction Documents; and to that end the County shall:

- (a) comply with the applicable provisions of Section 103 and 141 through 150 of the IRC and any regulations promulgated thereunder so long as the Financing is outstanding;
- (b) establish funds, make calculations and pay amounts in the manner and at the times required to comply with the requirements of the IRC relating to required rebates of certain amounts to the United States; and
- (c) make reports of information at the times and places required by the IRC.

If at the time the Financing is closed, the County does not reasonably anticipate more than \$10,000,000 in tax-exempt obligations which are not "private activity bonds" during calendar year 2016, all within the meaning of Section 265(b) of the IRC, the County will designate the Financing as a "qualified tax-exempt obligation" in accordance with Section 265(b)(3) of the IRC.

The County will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

Section 6. Intent to Reimburse. The Council declares its official intent pursuant to regulations promulgated by Internal Revenue Service and U.S. Treasury Department, particularly Section 1.150-2 of the Treasury Regulations.

Regulation §1.150-2 to reimburse the County for Financing-related expenditures incurred and paid on or after the date occurring 60 days prior to the date of first reading of this Ordinance, from the proceeds of federally tax-exempt obligations of the County.

The County understands that expenditures which may be reimbursed are limited to expenditures which are (a) properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of “placed in service” under Regulation §1-150-2) under general federal income tax principles; or (b) certain *de minimis* or preliminary expenditures satisfying the requirements of Regulation §1.150-2(f).

The source of funds for the expenditures with respect to the Financing will be the County’s general fund.

To be eligible for reimbursement of the expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the expenditures were paid, or (b) the date the Equipment was placed in service, but in no event more than three years after the County made the original expenditures.

Section 7. Filings with Central Repository. In compliance with Section 11-1-85 of the SC Code, the County covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the County within thirty (30) days of the County’s receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the County, adversely affects more than five percent (5%) of the County’s revenue or its tax base.

Section 8. Severability. All orders, resolutions and any parts in conflict with this Ordinance are, to the extent of that conflict, repealed.

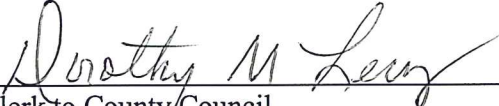
Section 9. Ordinance Binding. This Ordinance is binding on the County Council, and, to the extent permitted by law, its successors.

[SIGNATURE PAGE FOLLOWS]

This Ordinance takes and remains in effect only after the County Council has approved it following three readings and a public hearing.




(SEAL)
ATTEST:



Clerk to County Council
Clarendon County, South Carolina

CLARENDON COUNTY, SOUTH CAROLINA



Chairman, County Council
Clarendon County, South Carolina

READINGS:

First reading: September 12, 2016

Second reading: October 13, 2016

Public Hearing: November 14, 2016

Third reading: November 14, 2016

EXHIBIT A
[FORM OF]

REQUEST FOR OFFERS

[\$AMOUNT]
Clarendon County, South Carolina
Equipment Financing
2016

NOTICE IS HEREBY GIVEN that Bids will be received by Clarendon County, South Carolina (“County”), at [LOCATION], until **11:00 a.m., South Carolina time, on [DATE]**, at which time the Bids will be opened for the purchase of the \$[AMOUNT] Equipment Financing 2016 (“**Financing**”).

Bids may be delivered by hand, mail or facsimile transmission (**Fax No. [NUMBER]**), but no bid shall be considered which is not actually received by the County at the place, date and time appointed and the County shall not be responsible for any failure, misdirection or error in the means of transmission selected by any financial institution submitting a bid (**each a “Bidder”**).

Please note that this solicitation is also being sent to a number of other institutions as well and that the County reserves the right to select the bid determined to be the most advantageous to the County. The selection process will be heavily weighted toward lowest financing costs. The County reserves the right to reject any or all bid Bids as well as negotiate with the lowest responsible bidder.

I. Structure of Financing:

- (a) Amount to be Financed: not exceeding \$[AMOUNT]. The County retains the option to change the total amount to be financed by up to 10%.
- (b) Payments: [NUMBER] approximately equal annual payments payable [DATES]. Unless otherwise designated by a bidder interest on the Financing will be calculated based on actual over actual using a 365-day year.
- (c) Guarantee of Interest Rate: The interest rate, costs and other terms of the bid submitted must be guaranteed from the date of the bid to the closing date (expected to be [DATE]).
- (d) Equipment: See Schedule I.
- (e) Form of Transaction Documents: The County and the successful bidder shall develop suitable documentation for the Financing within a reasonable time after the County’s acceptance of the bid.
- (f) Non-appropriation: A non-appropriation provision acceptable to the County must be included in the Transaction Documents.
- (g) Non-substitution: A non-substitution provision is not permitted to be included in the Transaction Documents.
- (h) Deficiency Judgment: No deficiency judgment can be assessed or imposed against the County nor will the full faith, credit and taxing power of the County be pledged to the payment of the Financing.

- (i) Title: Title to the equipment will be in the name of the County subject to the successful bidder's rights under the Transaction Document. The Transaction Documents must allow the County to dispose of various items of equipment in its discretion provided the value of the remaining items of equipment is not less than the outstanding balance of the Financing at the time of the disposition.
- (j) Acquisition/Escrow Account: The County will require the successful bidder to transfer by Federal funds the full amount of this financing on the date of the closing. If a bidder requires that the acquisition or escrow account ("Acquisition/Escrow Account") be held by it or its designee, the bidder must so indicate in its bid. Otherwise the County retains the right to designate a bank to act as custodian of the Acquisition/Escrow Account. Interest earnings in the Acquisition/Escrow Account must accrue to the County. Payments therefrom may be made either to the County as reimbursement for prior expenditures or directly to the equipment vendor for payment of the equipment as directed by the County.
- (k) Costs of Issuance: The fees of Special Counsel will be paid by the County. The County will not pay for any review fees or other costs of the successful bidder.
- (l) Insurance: The County is insured through the [INSURER]. The Equipment will be insured in a similar manner at face value. The successful bidder may be listed as a loss-payee, but may not be listed as an additional insured under the County's insurance coverage.
- (m) Financing Designated As Qualified Tax-Exempt Obligation: The County will designate the Financing as a "qualified tax-exempt obligation" for purposes of Section 265 of the Internal Revenue Code of 1986 relating to the ability of financial institutions to deduct from income for federal income tax purposes interest expense that is allocable to carrying and acquiring tax-exempt obligations.
- (n) Closing: The County expects to accept the successful bid on [DATE], and to close the transaction on or about [DATE].

II. Bid Requirements.

- (a) The bid must be in writing.
- (b) No response may be modified by the bidder after it has been submitted.
- (c) Bids should include: the name, address, and telephone number of your institution; the primary contact; and identity of legal counsel, if any.
- (d) Bids must be accompanied with a list of all requirements and conditions associated with the bid.
- (e) Bids must indicate a *single* interest rate for the Financing term and include an amortization schedule showing annual payment amounts for the term of the financing.

III. Evaluation of Bids and Award. After the Bids are received, they will be evaluated by the officials of the County based on various factors, including the interest rate, additional covenants and terms, if any, and other conditions set forth therein. The County reserves the right to reject any and all bids or to waive irregularities in any bid. The County expects to accept the successful bid on [DATE].

IV. Legal Opinion. The execution and delivery of the Transaction Documents is subject to the approving opinion of the Parker Poe Adams & Bernstein LLP, Special Counsel.

VI. Tax Exemption and Other Tax Matters. The Internal Revenue Code of 1986, as amended ("Code"), including the Treasury Regulations promulgated thereunder, imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations like the Financing. The County will covenant to comply with certain covenants, restrictions, conditions and requirements designed to ensure that interest on the Financing will not become includable in gross income of the recipients thereof for federal income tax purposes. Failure to comply with these covenants could cause interest on the Financing to be included in gross income for federal income tax purposes retroactive to the date of closing of the Financing.

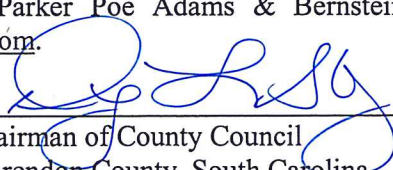
The accrual or receipt of interest on the Financing may affect the federal income tax liability of the successful bidder. The extent of these other tax consequences will depend on the successful bidder's particular tax status or other items of income or deduction. Bidders are advised to consult their tax advisors as to the tax consequences of purchasing or holding the Financing.

VII. Investment Letter. The successful bidder will be required to certify at closing that, among other things, it is acquiring the Financing as a vehicle for making a commercial loan; it has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Financing; it understands that no comprehensive offering statement containing material information with respect to the County and the Financing is being issued, and that, in due diligence, it has made its own inquiry and analysis with respect thereto; and that it is purchasing the Financing for its own account and not with a view to resale or other distribution therein, and that it does not currently contemplate the division of the Financing purchased nor the resale or other disposition of the Financing, or any part thereof, purchased by it, except as permitted by law and subject to applicable securities laws and regulations thereunder. If the successful Bidder intends to hold the Financing, the Financing will be registered in the name of the successful Bidder and will be delivered to the successful Bidder on the date of closing. Payment of principal and interest with respect to the Financing shall be made directly to the registered owner of the Financing.

VIII. Municipal Advisor. The County is anticipated to act as its own municipal advisor in this transaction.

VIII. Additional Information. If you should have any questions regarding the Request for Offers, you should contact: Michael E. Kozlarek, Esquire, Parker Poe Adams & Bernstein LLP, Telephone: 864.577.6361, Email: michaelkozlarek@parkerpoe.com.

s/


Chairman of County Council
Clarendon County, South Carolina

Dated: [DATE]

SCHEDULE I
DESCRIPTION OF EQUIPMENT*

Four 2016 Dodge Chargers
Four light kits, sirens, speakers
Four in-car camera systems
Four radar systems

Additional Items:

Radios
Interior add-ons
Graphics
Push bumpers
First Aid kits
Other related equipment

*Items may be substituted based on model year, availability, and other similar considerations. Costs are approximated.